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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JENIFER FAHEY, DAVIDE BRENNER,
and ROHIT R. RATHOD

Appeal 2009-006162
Application 09/972,381[1]
Technology Center 2600

Before MAHSHID D. SAADAT, MARC S. HOFF, and BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL[2]

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[1] The real party in interest is Motorola Inc.

[2] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-37. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellant's invention concerns methods for dynamically creating polyphonic audio mixes on handheld mobile wireless communication devices (Spec. ¶ 0010).[3] A second or subsequent soundtrack may be selected and played along with one or more prior selected soundtracks, providing the user with an immediate indication of how the composition of the selected soundtracks will sound during creation (Spec. ¶ 0013).

Claims 1 and 18 are exemplary of the claims on appeal:

1. A method for creating a polyphonic audio mix on a handheld mobile wireless communication device having a soundtrack data set file stored thereon, comprising:

entering first reference data for a first soundtrack of the soundtrack data set file into an audio mix data reference file by selecting the first soundtrack,

entering second reference data for a second soundtrack of the soundtrack data set file into the audio mix data reference file by selecting the second soundtrack,

the audio mix data reference file having the first and second reference data representative of a user defined polyphonic audio mix;

storing the audio mix data reference file having the first and second reference data on the handheld mobile wireless communication device separately from the soundtrack data set file.

18. A method for a polyphonic audio mix on a handheld mobile wireless communication device, comprising:

selecting a first soundtrack;

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[3] All references to the Specification ("Spec.") refer to the Substitute Specification filed September 1, 2005.

playing the first soundtrack upon selecting the first soundtrack;
selecting a second soundtrack while playing the first soundtrack;
playing the second soundtrack upon selecting the second soundtrack while playing the first soundtrack.

The Examiner relies upon the following prior art in rejecting the claims on appeal:

Hruska US 2002/0170415 A1 Nov. 21, 2002

Claims 1-37 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Hruska.

Throughout this decision, we make reference to the Appeal Brief ("App. Br.," filed September 27, 2006), the Reply Brief ("Reply Br.," filed March 28, 2007) and the Examiner's Answer ("Ans.," mailed February 9, 2007) for their respective details.

ISSUES

Appellants argue that Hruska does not teach an audio mix data reference file having reference data, the reference file being stored separately from the soundtrack data file (as recited in claims 1 and 10). App. Br. 5, 8.

Appellants further assert that Hruska does not teach playing a second soundtrack with a first soundtrack after selecting the second soundtrack (as recited in claims 5 and 18), or playing a first soundtrack effect with a first soundtrack upon selecting the first soundtrack effect (claim 6), or playing a selected audio characteristic of a first soundtrack while playing the first soundtrack upon selecting the audio characteristic (claims 30 and 37). App. Br. 6, 7, 10-12.

Appellants contend that Hruska does not teach integrating the audio mix data reference file and the soundtrack data set file into an audio format file (claim 14). App. Br. 8.

With respect to claim 16, Appellants argue that Hruska does not teach an audio mix data reference file. App. Br. 9.

With respect to claim 34, Appellants contend that Hruska does not disclose selecting a second soundtrack having a second time interval, the second time interval different than the first time interval. App. Br. 11.

Appellants' contentions present us with the following five issues:

1. Does Hruska teach storing an audio mix data reference file separately from a soundtrack data set file?

2. Does Hruska teach playing a second soundtrack, or a soundtrack effect, or audio characteristic, along with a first soundtrack, after selecting the second soundtrack, or soundtrack effect, or audio characteristic?

3. Does Hruska teach integrating the audio mix data reference file and the soundtrack data set file into an audio format file?

4. Does Hruska teach an audio mix data reference file?

5. Does Hruska teach selecting a second soundtrack having a second time interval that is different from a first time interval of a first soundtrack?

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Hruska

1. Hruska teaches that its musical content consists of "a MIDI file containing all the part patterns and a control file containing the control settings" (¶ 0022).

2. Hruska further teaches that "optionally, the MIDI sequence data and control file may be combined and rendered into a standard MIDI file (SMF file)" (¶ 0038).

3. "Once the content author is satisfied with the musical results, they save their data file(s) (e.g. the MIDI file(s), control data file(s) or any combination thereof) and download them to the mobile device" (Hruska ¶ 0040).

4. Hruska teaches that "[t]he control parameters contain some of the musical elements that can be rearranged or changed during operation by a user" (¶ 0024).

5. "During operation, the user may enter new values (11) that update the control data structure and consequently effect playback (12). As this is happening, these values are displayed to the user (13) and the user is auditioning the audio output" (¶ 0038).

6. Hruska further teaches that "[u]sers are allowed to rearrange which parts and which part patterns are playing at any given time" (¶ 0020).

7. Hruska further teaches that the items that a user is allowed to rearrange at any given time include "a variety of other MIDI effects such as note duration or hold, grace notes, pitch bend, chord creation, chord inversion, and accents" (¶ 0020).

8. Hruska provides an example of the control grid data file, showing examples for the solo (s), harmony (h), drum (d), and bass (b) parts:

s=AAAaAAAaAAAaBbBb
h=----aAaAaAaAb-b-
d=BBBbAAAAaaabaaab
b=bbb-AAAAaaa-----

Hruska ¶ 0027-0030.[4]

PRINCIPLES OF LAW

"A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." *See In re Buszard,* 504 F.3d 1364, 1366 (Fed. Cir. 2007) (quoting *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994)).

ANALYSIS

CLAIMS 1-4 AND 7-9

We select claim 1 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

We find Appellants' argument that Hruska does not teach an audio mix data reference file stored separately from a soundtrack data file to be unpersuasive of Examiner error. We agree with the Examiner's finding that Hruska's MIDI sequence data file (hereinafter "MIDI file") corresponds to the claimed soundtrack data file, and Hruska's control grid data file (hereinafter "control file") corresponds to the claimed audio mix data reference file (Ans. 4). Hruska teaches that its musical content consists of "a

[4] Each of the sixteen characters in a part represents a measure. Each letter is one of four patterns of a musical part, either A, B, A-variation ("a"), or B-variation ("b"). Hruska ¶ 0020. A dash ("-") indicates that a part is muted. Hruska ¶ 0025.

MIDI file containing all the part patterns and a control file containing the control settings" (FF 1). We note that these files are separately created and separately stored. Hruska further teaches that *optionally*, these two files may be combined and rendered into a "standard MIDI file (SMF file)" (FF 2, emphasis added). "Once the content author is satisfied with the musical results, they save their data file(s) (e.g. the MIDI file(s), control data file(s) or any combination thereof) and download them to the mobile device" (FF 3). Taken together, Hruska clearly teaches that the MIDI file and control file *may* be, but are not *required* to be, combined into a single SMF file. We therefore agree with the Examiner's finding that Hruska teaches storing the control file (which corresponds to the claimed "audio mix data reference file") on the handheld mobile wireless communication device separately from the soundtrack data set file (the "MIDI file"), as representative claim 1 requires.

Appellants have not shown that the Examiner erred in finding every element of representative claim 1 to be taught by Hruska. Accordingly, we will sustain the Examiner's § 102 rejection of claims 1-4 and 7-9.

CLAIM 5

Appellants' argument that Hruska does not disclose "wherein a second soundtrack is played upon selecting the second soundtrack while a first sound track (sic) is playing" is not persuasive. Hruska teaches that "[t]he control parameters contain some of the musical elements that can be rearranged or changed during operation by a user" (FF 4). According to Hruska, "[d]uring operation, the user may enter new values (11) that update the control data structure and consequently effect playback (12). As this is happening, these values are displayed to the user (13) and the user is

auditioning the audio output" (FF 5). Hruska further teaches that "[u]sers are allowed to rearrange which parts and which part patterns are playing at any given time" (FF 6). Considering these teachings together, we agree with the Examiner's finding that Hruska teaches this feature (Ans. 21).

Appellants have not shown error in the Examiner's § 102 rejection of claim 5, and therefore, we will sustain the rejection.

CLAIM 6

We are not persuaded by Appellants' argument that Hruska does not teach that a first soundtrack effect is played upon selecting a first soundtrack effect while a first soundtrack is playing (App. Br. 6). As explained *supra* with respect to claim 5, Hruska ¶¶ 0020, 0024, and 0038 together teach that a user may cause a second soundtrack to play upon selecting a second soundtrack while a first soundtrack is playing. Hruska further teaches that the items that a user is allowed to rearrange at any given time include "a variety of other MIDI *effects* such as note duration or hold, grace notes, pitch bend, chord creation, chord inversion, and accents" (FF 7, emphasis added). Taken in combination with Hruska's other teachings, we find that Hruska also discloses that a user may select a soundtrack effect while a soundtrack is playing, and said soundtrack effect will be played upon its selection, as claim 6 requires.

Appellants thus have not shown error in the Examiner's § 102 rejection of claim 6, and we will sustain the rejection.

CLAIMS 10-13

We select claim 10 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Appellants' argument that Hruska does not teach a reference file stored separately from the soundtrack data file (App. Br. 8) is not persuasive. As explained *supra* with reference to claim 1, we find that Hruska does teach separate storage of an audio mix data reference file and a soundtrack data set file.

We therefore sustain the § 102 rejection of claims 10-13 as being anticipated by Hruska, for the reasons expressed *supra* with respect to claim 1.

CLAIMS 14 AND 15

We select claim 14 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Appellants' argument that Hruska does not teach integrating the audio mix data reference file and the soundtrack data set file into an audio format file is not persuasive. We find *supra* that Hruska discloses that "optionally, the MIDI sequence data and control file may be combined and rendered into a standard MIDI file (SMF file)" (FF 2).

Appellants' further argument that Hruska does not teach an audio mix data reference file devoid of soundtrack data from the soundtrack data set file (App. Br. 8) is similarly unpersuasive, in light of our finding in the analysis of claim 1 *supra* that Hruska teaches a MIDI sequence data file, containing audio data, separate from a control grid data file containing control settings.

Because Appellants have not shown that the Examiner erred in rejecting representative claim 14 as being anticipated by Hruska, we will sustain the § 102 rejection.

CLAIMS 16 AND 17

We select claim 16 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Appellants' argument that Hruska cannot possibly integrate an audio mix data reference file and a soundtrack data set file into a single audio format file because Hruska does not disclose an audio mix data reference file (App. Br. 9) is not persuasive. We find *supra* (in the discussion of claim 1) that Hruska's control grid data file corresponds to the audio mix data reference file claimed.

Appellants have not shown that the Examiner erred in finding representative claim 16 to be anticipated by Hruska. Accordingly, we will affirm the § 102 rejection of claims 16 and 17.

CLAIMS 18-29

We select claim 18 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Appellants make the same argument for claim 18 as for claim 5, *supra*. Thus, because we find that Hruska does meet the limitation "playing the second soundtrack upon selecting the second soundtrack while playing the first soundtrack," we will sustain the § 102 rejection of representative claim 18, as well as claims 19-29 dependent therefrom, for the same reasons expressed with respect to claim 5.

CLAIMS 30-33

We select claim 30 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Appellants' arguments with respect to claim 30 mirror Appellants' arguments with respect to claim 5, that Hruska fails to disclose dynamic

mixing of a soundtrack and an audio characteristic for the sound track, wherein the characteristic is played upon selecting the characteristic while the first soundtrack is playing (App. Br. 11). As explained *supra*, however, we find that Hruska teaches playing a second soundtrack, or an audio characteristic, along with a first soundtrack, immediately upon selection by a user. We will therefore sustain the rejection of claims 30-33 for the same reasons expressed with respect to claim 5.

CLAIMS 34-36

We select claim 34 as representative of this group of claims, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Appellants' argument that Hruska does not disclose soundtracks having differing time intervals is not persuasive. Hruska provides an example of the control grid data file at paragraphs 0027-0030, showing examples for the solo (s), harmony (h), drum (d), and bass (b) parts:

s=AAAaAAAaAAAaBbBb
h=----aAaAaAaAb-b-
d=BBBbAAAAaaabaaab
b=bbb-AAAAaaa-----

FF 8.

Hruska thus teaches that in this example, the solo part plays during the interval of measures 1-16, the harmony part plays during the interval of measures 5-13 and 15, the drum part plays during measures 1-16, and the bass part plays during measures 1-3 and 5-11. Accordingly, we find that Hruska teaches the concept of soundtracks having differing time intervals.

Because Appellants have not shown error in the Examiner's § 102 rejection of representative claim 34, we will sustain the rejection of claim 34 and claims 35 and 36 dependent therefrom.

CLAIM 37

Appellants' argument that Hruska does not teach playing the audio characteristic of the first soundtrack upon selecting the audio characteristic while playing the first soundtrack is not persuasive to show Examiner error. Appellants' argument parallels Appellants' previous contention that Hruska does not disclose "wherein a second soundtrack is played upon selecting the second soundtrack while a first sound track (*sic*) is playing," as recited in claim 5. Therefore, we will sustain the § 102 rejection of claim 37 for the same reasons expressed with respect to the rejection of claim 5, supra.

CONCLUSIONS

1. Hruska teaches storing an audio mix data reference file separately from a soundtrack data set file.

2. Hruska teaches playing a second soundtrack, or a soundtrack effect, or audio characteristic, along with a first soundtrack, after selecting the second soundtrack, or soundtrack effect, or audio characteristic.

3. Hruska teaches integrating the audio mix data reference file and the soundtrack data set file into an audio format file.

4. Hruska teaches an audio mix data reference file.

5. Hruska teaches selecting a second soundtrack having a second time interval which is different from a first time interval of a first soundtrack.

ORDER

The Examiner's rejection of claims 1-37 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

ELD

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